

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

DYNACARE NORTHWEST, INC.

Employer

and

Case 19-RC-14315

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL
UNION, LOCAL 1001, AFL-CIO-CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board ("Board").

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, I make the following findings.²

SUMMARY

The Employer operates medical diagnostic laboratories comprised of a main office in Mt. Vernon, Washington, and ten satellite offices. The Employer's operations are spread out in Island, Snohomish, Skagit, and Whatcom Counties in Washington State. The Petitioner at the time of the hearing in this matter, was party to a labor agreement, with the Employer, covering all nonprofessional employees employed by the Employer in the locations noted above.³ The Petitioner seeks to add to this existing unit, through a self-determination election, all full-time and regular part-time professional employees employed by the Employer as medical

¹ The Employer submitted a brief, which was duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization involved claims to represent certain employees of the Employer and; a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The recognition clause of the parties' labor agreement, which was in effect at the time of the hearing in this matter but which by its terms expired on October 31, 2002, states: "The Employer recognizes the Union as the sole and exclusive bargaining representative for all nonprofessional employees employed by the Employer at its Snohomish, Skagit, Whatcom and Island County locations in Washington State; excluding supervisors, professional employees, confidential employees, temporary employees, on-call employees, client representatives and guards."

technologists and cytotechnologists. The Employer contends that it is inappropriate to include these professional employees in the unit of non-professionals. The Employer further contends that Kathleen Kennedy is a confidential employee and that Eileen Rudnick is a dual function employee and, therefore, neither should be included in the unit. With respect to the medical technologists and cytotechnologists, I find that they should be permitted to vote as to whether they wish to be included in the unit of non-professionals and whether they wish to be represented by the Petitioner. Regarding Kennedy and Rudnick, I shall include them in unit for the reasons noted below.

BACKGROUND

The Employer provides medical laboratory diagnostic testing services, including analysis of blood and other bodily fluids and tissues, to clients in the medical community. Its main diagnostic facility, located in Mt. Vernon, Washington, is known as Skagit County Lab.

The existing unit of non-professional employees includes about 115 employees. There are 38 phlebotomists, whose primary duty is to draw blood. They are required to have a high school education, and preferably, experience in venipuncture. There are 18 aide I's and 25 aide II's. These positions are responsible for processing paperwork and non-technical preparation of specimens for testing. Aide I's may also perform tests that require no certification to perform. Aide II's are responsible for data entry and preparing the specimens for testing. There are 19 couriers, who transport mail, specimens, and reports between the Employer and the clients. Beyond a high school diploma, couriers are required to have a clean driving record. The three transcriptionists in the existing unit transcribe dictation done by pathologists.⁴ Transcriptionists are required to have taken a course in medical technology and preferably have had six months experience.⁵

The existing unit of non-professional employees also includes medical laboratory technologists (MLT's). MLT's perform all routine analysis of the tested specimens and prepare reports for the clients. Where appropriate, they perform these functions with the assistance of medical technologists. However, MLT's can perform the majority of tests without the assistance of a medical technologist. MLT's are required by government regulation to be certified in order to perform their duties.⁶ With the exception of medical laboratory technologists, none of the classifications in the existing unit are required by government regulation to have any special certification or training.

Medical technologists and cytotechnologists are the two professional positions that Petitioner seeks to add to the existing unit.⁷ The Employer employs approximately 14 medical

⁴ It is not clear whether the Employer actually employs professionals, such as pathologists, in addition to the medical technologists and cytotechnologists, but it does appear that the Employer utilizes the services of a pathologist in its lab testing operations.

⁵ The record reveals that the existing unit of non-professional employees also consists of two billing employees, one stockroom employee, one histo technician and an unspecified number of switchboard, maintenance, dishwasher, and purchasing agent employees.

⁶ Federal CLIA regulations set forth the requirements for laboratory testing. The Board of Registry of the American Society of Clinical Pathologists Sciences (ACPS) is a certification agency that frequently oversees the certification required for lab of the nature performed by the Employer.

⁷ The parties stipulated, and I find, that the job classifications of cytotechnologists and medical technologist are professional employees, in that their work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of instruction and study in an

technologists. Medical technologists perform routine and complex analyses of assigned tests, and release the results to the caregivers. The duties of the medical technologists overlap significantly with the duties of the MLT's. However, an example was provided in the record of at least one instance where a medical technologist would be qualified to give a definitive interpretation of a test result and an MLT would properly defer to or consult with the medical technologist before making this type of interpretation.⁸ Medical technologists are required to have a bachelor's degree and certification in a one-year medical technology program for biology, chemistry, or a related science.

Cytotechnologists review specimens to determine if any cancerous state exists. The nine cytotechnologists employed by the Employer work in the Cytology Department at the Skagit County Lab. Cytotechnologists are required to have two years of schooling in an accredited cytotechnologist program. The Employer employs nine cytotechnologists.

The Employer's main facility at Skagit County Lab is home to the following departments: Microbiology, Chemistry, Cytology, Affiliated Health Services, Patient Service Center/Phlebotomy, Client Services/Courier, Central Processing, and Histology. An individual supervisor who reports to the Employer's Associate General Manager, Linda Thayer, supervises each department.⁹

The Microbiology Department is located in the basement of the North Building at Skagit County Lab. Included in this Department are two MLT's, three medical technologists, one aide one and I aide II. All of these positions are supervised by Laurie Ames. The MLTs and the medical technologists use specialized equipment to perform their duties. This equipment essentially organizes blood cultures and identifies organisms.

Adjacent to the Microbiology Department is the Histology Department, which employs one histotech, one aide I, one aide II, and a transcriptionist, all of whom are supervised by Katie Dahl. It is not clear what work is performed in the Histology Department and what its functional integration is with the rest of the Employer's operations.

The Chemistry Department is located on the first floor of the North Building at Skagit Valley Lab. The Chemistry Department employs six medical technologists and two MLT's. All are supervised by Sandra Wells. Chemistry employees in both the medical technologist and MLT classifications use specialized equipment to perform chemical tests on blood samples and other bodily fluids.

The Cytology department is located in the basement of the South Building at Skagit Valley Lab. In Cytology, cells are examined to determine if cancerous states exist. This department employs nine cytologists, eleven aide II's and an aide I. All are supervised by Stephanie Hamilton.

Affiliated Health Services (AHS) is another department of the Employer's operation. This department oversees the employees who perform laboratory work at the two hospitals that are clients of the Employer. The AHS/Phlebotomy Department employs two aide I's, two MLTs,

institution of higher learning, and that their work is predominantly intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical.

⁸ The one example provided in the record was for a test that assessed the presence of kidney disease.

⁹ The individual supervisors have authority to discipline, hire and fire the employees that he or she supervises and I find that these department supervisors are supervisors under the Act.

medical technologists, and phlebotomists, and is supervised by Kevin O'Brien Machete. Machete reports to Nancy Nichols who oversees AHS/Hematology work performed by two aide I's and possibly some medical technologists.¹⁰

Patient Service Centers/Phlebotomy refers to the "draw stations" where blood and urine samples are drawn. This Department employs phlebotomists and medical technologists, and is supervised by Don Lee.

Client Services employs couriers and aides I. Client Services is responsible for coordinating services to the clients through the phlebotomy and courier departments. Jeff Duncan supervises this department.

Services are apparently provided in the following manner. Typically, phlebotomists take blood or urine specimens from client patients at one of the draw stations, or at one of two hospitals.¹¹ Occasionally, a medical technologist, rather than a phlebotomist, will draw the blood.¹² Some of the specimens drawn are analyzed on site by an MLT or a medical technologist. Those specimens that cannot be analyzed on site are transported to Skagit County Lab by the couriers. Transported specimens are initially delivered to the Central Processing Department. At Central Processing, aide II's determine the appropriate department to analyze the specimen, be it Microbiology, Histology, Chemistry, or Cytology, and transfer the specimen accordingly. Upon transfer to a department, an aide I or II, in the department, enters information regarding the sample into the computer, and prepares the sample for testing. If no department aide is available, an MLT or a professional may also do this step of entering information into the computer and preparing the specimen for testing.¹³ Next, an MLT, medical technologist or cytotechnologist (in cytology only) analyzes the sample, and then generates a report for transmission to the client. In some instances, the aide will assist in the reporting process by inputting the report into the computer, but such report will not be transmitted or released to the client until a medical technologist has approved it. In Cytology, if the results are normal, the sample and report is given back to the aide for release to the client. If the sample is abnormal, the cytotechnologist first delivers the sample to a pathologist, before it goes back to the aides.

There is a break room in the North Building at Skagit County. The parties stipulated that the medical technologists and cytologists have regular and daily interaction with the non-professional bargaining unit employees both in the work room and the break areas and work in close proximity to one another.

The average wage rate for bargaining unit employees is about \$12.00 per hour. MLT's earn an average of about \$16.50 per hour. Cytologists and medical technologists earn about \$23.00 per hour. The professional employees receive annual wage increases on their

¹⁰ The record indicates that medical technologists work for Nichols but the Employer's witness and documents were not clear on this point.

¹¹ The Employer is contracted to provide diagnostic services at United General Hospital and Skagit Valley Hospital. Neither of these hospitals have their own laboratory staff. Rather, the Employers' employees staff the medical laboratories located at the hospital facilities.

¹² Medical technologist Eileen Rudnick testified that at the Oak Harbor lab and United General Hospital, the volume of patients is so high that she also draws and processes blood, then if appropriate, performs tests.

¹³ Medical technologist Cynthia Carlson testified that she spends less than 5% of her time doing this processing work that aides do, but that on certain days and when the workload demands it, MLT's are scheduled to assist the aides in the processing work.

anniversary and periodically receive market rate adjustments for recruitment and retention needs. Professional employees have been paid hiring and relocation bonuses of up to \$5000.00, which are typically conditioned on completion of a one-year employment contract. Unit employees typically receive annual raises negotiated through collective bargaining.

The professional employees, at issue, currently receive the same benefit plans as do the members of the established bargaining unit. Dynacare changed ownership in July of 2002. In connection with that change, the Employer is in the process of implementing new pension and benefit packages for professional employees. These new packages, which will become effective in January 2003, will result in differences between the benefit packages of the professional and bargaining unit employees. The professional employees will be responsible for part of the cost of their dental, vision, and long-term disability insurance. Also, they will be able to enroll in a pension plan and a stock purchase plan and they will receive an annual leave bank that will be used for any type of leave be it sick, vacation, or personal leave.

The health and retirement benefits for employees in the non-professional bargaining unit are governed by the terms of the collective bargaining agreement. Under the agreement, these employees are not responsible for any part of their dental, vision, or long-term disability insurance. They will not be covered by the same pension plan or eligible for the stock purchase plan that will be in effect for the non-bargaining unit employees beginning in 2003. Non-professional unit employees have the option of participating in a 401(k) plan that differs from the plan that will be offered to professional employees next year.¹⁴

Regarding Kennedy, the record reveals that the Employer employs her as medical technologist. Kennedy spends about 40 percent of her work time performing medical technologist work similar to the work of the other professionals employed in that classification. The balance of Kennedy's work time is spent performing "technical consultant" work, which consisted of working on one special project dealing with improving service and efficiency at the Skagit Valley Hospital Lab. Kennedy also has performed audits of client and patient bills to insure that billing is in line with orders received and actual testing. The record reveals that the Lab project resulted in recommendations that impacted staffing and equipment placement but it is unclear what, specifically, was Kennedy's role in such recommendations other than that the Employer's Vice President of Operations "consulted" with Kennedy when the former wrote the report and when he made recommendations based on the Lab project. The Vice President of Operations testified that Kennedy did not have access to any confidential information or documents when she worked on this special project. Regarding the audit work, I note that employees in the existing non-professional unit -- billing representatives -- appear to perform work similar to the audit functions performed by Kennedy. There was further testimony that in performing that audit function, Kennedy could possibly come across some irregularities, which she would have to report to management who, in turn, would handle any discipline flowing from the irregularities.

With respect to Rudnick, the record reveals that, since about January 2001, the Employer has employed her as a medical technologist and as an "information systems analyst" employee. The record reveals that Rudnick splits her work-time equally between these two positions. As a medical technologist, Rudnick has worked at a number of the Employer's facilities, involved in this proceeding, performing substantially the same work as that performed

¹⁴ The record also reveals that some of the Employer's professionals and non-professional unit employees often attend the same training and compliance meetings along with other non-unit employees of the Employer.

by the other medical technologists. Rudnick testified that, as a medical technologist, she often reviews the work of some of the non-professionals, in the existing unit, and has had the work “redone” when that situation occurs. It is not clear what the “redone” procedure entails or the extent and nature of Rudnick’s role in that process. As an analyst, Rudnick works on problems in the same computer system utilized by non-professionals in the existing unit and by the medical technologists and cytologists. When performing analyst work, Rudnick is supervised by DeeDee Baker, who is the Director of Information Services and whose office is located at the Employer’s regional office in Seattle, Washington.

THE PARTIES’ POSITIONS

The Employer asserts that the self-determination election should be limited to allowing the medical technologists and cytotechnologists to vote whether they wish to be represented by Petitioner and that they should not be permitted to vote whether they wish to be included in the existing unit with non-professionals. In support of its position, the Employer makes two arguments. 1) The requested combined unit is inappropriate because it does not comply with the Board’s mandate regarding the composition of bargaining units in acute health care facilities. In particular, the Board’s Rule, governing acute care hospitals, is applicable because a percentage of the professional employees at issue perform work at satellite facilities in acute care hospitals, these hospitals are clients of the Employer, and the hospitals having no other diagnostic laboratory personnel. 2) A combined unit is inappropriate under Board precedent applicable to bargaining units in non-acute health care institutions because employees forming the existing non-professional unit have divergent communities of interest, educational levels, and job functions. Contrary to the Employer, the Petitioner argues that the professional employees at issue share a sufficient community of interest with the members of the existing bargaining unit to justify allowing them the opportunity to vote as to whether or not they wish to be included in the existing unit.

The Employer further contends that Kennedy is a confidential employee and that Rudnick is a dual purpose employee who does not share a community of interest with professional employees and that both should, therefore, be excluded from any unit found appropriate by the Board. The Petitioner contends that Kennedy and Rudnick are dual-function employees who should be included in the unit and that the Employer has failed to meet its burden of establishing Kennedy’s status as a confidential employee.

ANALYSIS

1. Applicability of the Board’s Health Care Industry Rule to this Case

The Board’s Health Care Industry Rule is applicable only to acute care hospitals. Under the Health Care Rule, “hospital” is defined in the same manner as defined under Medicare, which requires, among other things, that the organization be an institution that is primarily engaged in providing diagnostic, therapeutic, or rehabilitative services to inpatients, under the supervision of physicians, and that it provide 24-hour nursing service rendered or supervised by a registered professional nurse, and have a licensed practical nurse or registered professional nurse on duty at all times. (42 U.S.C. 1395x(e)). Based on the record, none of these requirements are met by the Employer. The Employer asserts that, because it provides services under contract to acute care hospitals, it should be treated as an acute care hospital. However, the Employer’s assertion is neither supported by legal authority nor by the facts. I find that the Employer is not an acute care hospital and that the Board’s Rule regarding bargaining units in

acute care hospitals is inapplicable. Accordingly, the Employer's contention that a combined unit is inappropriate because it violates the Board's Health Care Industry Rule is rejected.

2. Appropriateness of a Combined Unit

A self-determination election is the proper method by which a union may add unrepresented employees to the contractual unit. In this regard, it is necessary to determine the extent to which the employees to be included share a community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. Warner Lambert Co., 298 NLRB (1990). Also applicable to this case is Park Manor Care Center, 305 NLRB 872 (1991), in which the Board ruled that the proper test for determining the appropriateness of bargaining units in non-acute care health care institutions is the "empirical community of interest test." Under that test, the Board considers community-of-interest factors, as well as factors considered relevant by the Board in its rulemaking proceedings on Collective-Bargaining Units in the Health Care Industry. These factors include education, and job function. The Board further considers the evidence presented during rulemaking with respect to units in acute care hospitals and prior cases involving either the type of unit sought or the type of health care facility in dispute.

Applying these factors of community interest amply demonstrates that the unit the Petitioner seeks has met the tests set forth under both Warner Lambert and Park Manor. In particular, there is a high degree of functional integration in the Employer's operations, as the work performed by the medical technologists and cytotechnologists is directly related to and integrated with the work of the majority, if not all, of the existing unit employees. There is significant overlap between the work of the medical technologists and the MLT's, both of whom have the primary responsibility of analyzing specimens and preparing reports of the analysis for release to the client. MLT's and medical technologists use much of the same specialized equipment in performing their job functions. The analyzed specimens move back and forth between members of the existing unit and members of the proposed unit. The medical technologists and cytotechnologists are directly supervised by the same supervisors for members of the existing unit of non-professionals. As specimens move in sequence through the Employer's operations, there is significant daily contact and interaction between existing members of the non-professional bargaining unit and the professional employees that Petitioner seeks to add to the unit. Indeed, non-professionals and professionals often work side-by-side in obtaining and testing specimens.

The professional employees to be added constitute an identifiable, distinct segment of the Employer's employees. Cytotechnologists and medical technologists have similar pay rates, benefits, and working conditions. Currently, they appear to be the only unrepresented employees working in the various departments of the Employer's operations, other than the pathologists, who are physicians. No party is seeking the inclusion of the pathologists and there is insufficient evidence to find, even if employees, that they share a sufficient community of interest with other professionals. I am therefore excluding them from the unit. Were I not to find them to be an appropriate voting group, there appears to be no more appropriate, alternate configuration, with which they could be grouped, that would constitute a distinct voting segment.

None of the additional factors set forth in Park Manor support a contrary finding. Respondent emphasizes the difference in educational requirement as a factor supporting a finding that a combined unit would be inappropriate. However, the educational requirements imposed on the MLT's are similar in kind and nature to the professionals at issue. Evidence presented during rulemaking with respect to professional units other than RN's and physicians

in acute care hospitals also does not disfavor the combined unit proposed here. That evidence generally supported the exclusion of other professionals from units composed of RN's or physicians and recognized that the statutory requirement that professionals vote before being included in a unit of non-professionals, functioned to protect any desire they may have to be represented in a separate unit. 53 FR 339001-01 (September 1, 1988). Finally, Board precedent does not support a different result, as the Board has found units composed of medical technologists and medical laboratory technicians to be appropriate. Mercy Health Services North, 311 NLRB 1091 (1993), Southern Maryland Hospital, 274 NLRB 1470 (1985).¹⁵

Thus, the record establishes that the professional employees, at issue, share a significant community of interest with the members of the existing non-professional bargaining unit, the professional employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group, and none of the additional factors set forth in Park Manor warrant a finding a combined unit inappropriate.

3. Status of Kennedy and Rudnick

"Confidential employees" are defined as employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitute for employees having such duties. Under Board policy, they are excluded from the unit. Ladish Co., 178 NLRB 90 (1969); Chrysler Corp., 173 NLRB 1046 (1969); Eastern Camera Corp., 140 NLRB 569, 574 (1963); B.F. Goodrich Co., 115 NLRB 722, 724 (1956); Hampton Roads Maritime Assn., 178 NLRB 263 (1969). The parties' agreement in the past to exclude clerks as confidential is not necessarily binding in a subsequent representations proceedings. Chrysler Corp., supra. The party asserting confidential status has the burden of proof in that regard. Crest Mark Packing Co., 283 NLRB 999 (1987). Applying the above standards to the record in this case reveals that the Employer has failed to meet its burden. The record clearly reveals that Kennedy did not have access to any confidential information, whatsoever, during the one special project that she worked on with the Vice President of Operations who simply "consulted" with her, in some undefined fashion, about decisions that ultimately had an impact on personnel staffing and equipment. With respect to the audit/billing work, I cannot see how possibly coming upon some billing errors is any different for Kennedy than it is for any other professional or non-professional employee who discovers an error by a co-worker. There is nothing in the record to suggest that Kennedy plays any role in the decision-making processing relating to discipline that may flow from some error that Kennedy, or any other employee for that matter, may report to Employer management. In sum, there is no factual basis for concluding that Kennedy is a confidential employee as that term is defined by Board policy. Accordingly, I shall not exclude Kennedy on this basis.

Regarding the issue of dual-function employee, the Board has held that employees who perform more than one function for the same employer may vote, even though they spend less than a majority of their time on unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit. See Ansted Center, 326 NLRB 1208 (1998); Air Liquide America Corp., 324 NLRB 661 (1997); Continental Cablevision, 298 NLRB 973 (1990); Alpha School Bus Co., 287 NLRB 698 (1987); Oxford Chemicals, 286 NLRB 187 (1987). The inclusion of a dual-function employee within a particular unit does not require a

¹⁵ I am not aware of any case, nor does the Employer cite one in its brief, in which the Board has found a unit that includes professional medical technologists and non-professional medical laboratory technicians inappropriate.

showing of community of interest factors in addition to regular performance of a substantial amount of unit work. Fleming Industries, 282 NLRB 1030 fn. 1 (1987). The record is clear that Kennedy (40 percent) and Rudnick (50 percent) regularly perform a substantial amount of medical technology work. Accordingly, they are eligible to vote with the balance of medical technologists in the election that I am directing below.

CONCLUSION

Accordingly, I find that the following groups of employees may constitute an appropriate unit:

Group 1: All non-professional employees employed by the Employer at its Snohomish, Skagit, Whatcom and Island County locations in Washington State; excluding supervisors, physicians, confidential employees, temporary employees, on-call employees, client representatives and guards.

Group 2: All full-time and regular part-time medical technologists and cytotechnologists employed by the Employer at its Snohomish, Skagit, Whatcom and Island County locations in Washington State.

In view of the statutory requirement that the Board may not join professional and non-professional employees in a single unit without the desires of the professional employees being determined in a separate vote, I shall, pursuant to the Board's decision in Sonotone Corp., direct that the voting professional employees, Group 2, be asked the following two questions on their ballots:

1.) Do you desire to be included with non-professional employees in the existing unit currently represented by United Food & Commercial Workers International Union, Local 1001, AFL-CIO-CLC?

2.) Do you wish to be represented for purposes of collective bargaining by United Food & Commercial Workers International Union, Local 1001, AFL-CIO-CLC?

If a majority of the medical technologists and cytotechnologists vote "yes" to the first question and "yes" to the second question, then, they shall become part of the existing unit currently represented by Petitioner and that unit shall then become the appropriate unit. If a majority of these professionals vote "no" to the first question and "yes" to the second question, they shall be taken to have indicated their desire to be represented in a separate, appropriate unit by the Petitioner.¹⁶ If a majority of the medical technologists and cytotechnologists employees vote "no" to the second question, they shall be taken to have indicated their desire to remain unrepresented irrespective of the outcome of the first question.

There are approximately 32 professional employees eligible to vote.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election

¹⁶ The Union has indicated its willingness to represent a unit composed solely of the professionals at issue in this petition. The Employer does not challenge the appropriateness of such a unit, arguing that the self-determination vote should be limited to the desires of these employees to be represented or not.

to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1001, AFL-CIO-CLC.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before November 26, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by December 3, 2002.

DATED at Seattle, Washington, this 19th day of November 2002.

Catherine M. Roth, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

401-7575-0000-0000
420-4617-0000-0000
470-1701-5000-0000
460-5067-4900-0000
460-5033-5000